

which are distinct from one another because they comprise components which are materially distinct. Office Action page 2, paragraph 2. Particularly, the phycobilisome which is used in dependent claims 46, 49 and 54 of Inventions II-IV is structurally distinct from that of Invention I in that it is stabilized, isolated or immobilized. The Office Action further contends that the systems of Inventions II-IV are functionally distinct, each from the other and therefore it is presumed that the systems are necessarily structurally different from one another to perform these different functions. *Id.* Applicant submits that such contentions are irrelevant as structural differences, *per se*, do not establish distinctness. For example, two claims reciting different structures are not necessarily distinct as it is possible that one of the claims is obvious, *i.e.*, not patentably distinct, over the other claim. Thus, the Office Action has failed to establish that inventions I-IV are distinct.

Applicant notes that Inventions II-IV are all drawn to phycobilisome-based systems for processing light. Independent claims 43, 47, and 50 each recite a “conversion means for receiving ultraviolet or visible light and directionally transferring light energy of said light.” These claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition. At the very least, Inventions II, III, and IV should be examined together.

Assuming, *arguendo*, that the inventions are distinct, Applicant submits that the Examiner must search and examine the entire application, *i.e.*, pending claims 1, 11, 15, 22, 31, and 43-55, due to the lack of any serious burden placed on the Examiner to do such. If the search and examination of an entire application can be without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. MPEP § 803. Because the pending claims are relatively few in number, *e.g.*, eighteen (18), and are drawn to phycobilisomes and uses thereof, a search and examination of the pending claims will not impose a serious burden on the Examiner.

For the above reasons, Applicant respectfully requests that the Examiner withdraw the restriction requirement and proceed with an examination of all pending claims.

CONCLUSION

Applicant maintains that the restriction requirement is improper and that all pending claims should be examined for patentability. If the Examiner believes that the prosecution might be advanced by discussing the application with Applicant's representatives, in person or over the telephone, we would welcome the opportunity to do so.

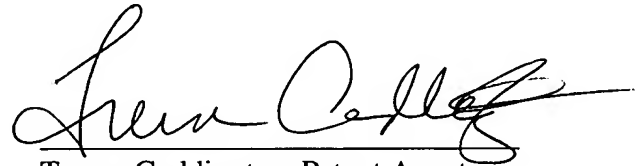
Applicant believes that no fee is required for the submission of this Response. However, in the event that the U.S. Patent and Trademark Office requires a fee to enter this Response or to maintain the present application as pending, please charge such fee to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

HUNTON & WILLIAMS LLP

Dated: April 28, 2003

By:



Trevor Coddington, Patent Agent
Registration No. 46,633
for: Laurence H. Posorske
Registration No. 34,698

Hunton & Williams LLP
Intellectual Property Department
1900 K Street, N.W., Suite 1200
Washington, DC 20006-1109
(202) 955-1500 (telephone)
(202) 778-2201 (facsimile)

TC/cdh